

Bureau of Land Management, Interior

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(1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;

(2) Specify the time during which the closure or restriction shall apply;

(3) Identify those persons who, without a written permit, are exempt from the closure or restrictions;

(4) Be posted in the local Bureau of Land Management office having jurisdiction over the lands to which the order applies; and

(5) Be posted at places near the closed or restricted area where it can be readily seen.

§ 9212.3 Permits.

(a) Permits may be issued to enter and use public lands designated in fire prevention orders when the authorized officer determines that the permitted activities will not conflict with the purpose of the order.

(b) Each permit shall specify:

(1) The public lands, roads, trails or waterways where entry or use is permitted;

(2) The person(s) to whom the permit applies;

(3) Activities that are permitted in the closed area;

(4) Fire prevention requirements with which the permittee shall comply; and

(5) An expiration date.

(c) An authorized officer may cancel a permit at any time.

§ 9212.4 Penalties.

Any person who knowingly and willfully violates the regulations at § 9212.1 of this title shall, upon conviction, be subject to a fine of not more than \$1,000 or to imprisonment of not more than 12 months, or both.

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

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9239.7-1 Public lands.

AUTHORITY: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701, *et seq.*; 18 U.S.C. 1851-1858.

SOURCE: 35 FR 9800, June 13, 1970, unless otherwise noted.

Subpart 9239—Kinds of Trespass

§ 9239.0-3 Authority.

(a) Sections 9239.0-3 to 9239.7 are issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(b) In addition to liability for trespass on the public lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:

(1) Timber trespass. 18 U.S.C. 1852, 1853.

(2) Turpentine trespass. 18 U.S.C. 1854.

(3) Coal trespass. 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

[35 FR 9800, June 13, 1970, as amended at 42 FR 4460, Jan. 25, 1977]

§ 9239.0-7 Penalty for unauthorized removal of material.

The extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991]

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§ 9239.0-8 Measure of damage.

The rule of damages to be applied in cases of timber or other vegetative resources, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of *Mason et al. v. United States* (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by Federal law a different rule is prescribed or authorized.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991]

§ 9239.0-9 Sale, lease, permit, or license to trespassers.

(a) For the purpose of this section, a trespasser is any person, partnership, association, or corporation responsible for the unlawful use of, or injury to, property of the United States.

(b) The authorized officer may refuse to sell to a trespasser timber or materials, or to issue to him a lease, permit, or license if, after a demand for payment has been served by certified or registered mail on the trespasser, a satisfactory arrangement for payment of the debt due the United States has not been made within reasonable time, and there is reason for the authorized officer to believe payment will not be made. Satisfactory arrangement shall be deemed to have been made by:

(1) Payment by the trespasser of the amount found to be due by the authorized officer, by a final judgment of a court, or pursuant to a compromise settlement accepted by the United States; or

(2) Execution by the trespasser of a promissory note or installment agreement, satisfactory to the authorized officer, so long as the agreed-upon payments are made on schedule; or

(3) Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the authorized officer or by a court of competent jurisdiction; or

(4) Cancellation of the debt due the United States by a discharge in bankruptcy.

(c) Notwithstanding the provisions of paragraph (b) of this section, the authorized officer may sell to a trespasser

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timber or materials or issue to him a lease, permit, or license for materials despite lack of a satisfactory arrangement for payment if such officer establishes in writing that:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid, and

(2) The sale, lease, permit, or license to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer, and

(3) The timber management or other resource management program of the United States will not be adversely affected by the action.

§ 9239.1 Timber and other vegetative resources.

§ 9239.1-1 Unauthorized cutting, removal, or injury.

(a) All of the definitions in § 5400.0-5 of this title apply to this section.

(b) Commission of any of the acts listed in §§ 5462.2 and 5511.4 of this title constitutes a trespass.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50451, Sept. 29, 1995]

§ 9239.1-2 Penalty for trespass.

(a) In accordance with §§ 9239.0-7, 9239.0-8, and 9239.1-1 of this subpart, anyone responsible for a trespass act is liable to the United States in a civil action for damages and may be prosecuted under criminal law as provided in § 9265.6 of this chapter.

(b) The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5511.2 to 5511.2-6 of this chapter will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under title 18 U.S.C., or under State law.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991; 60 FR 50451, Sept. 29, 1995]

§ 9239.1-3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum

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damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trespass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(4) In the case of a purchase from a trespasser, if the purchaser has no knowledge of the trespass, but should have had such knowledge through reasonable diligence, the value at the time of the purchase.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50451, Sept. 29, 1995]

§ 9239.2 Unlawful enclosures or occupancy.

§ 9239.2-1 Enclosures of public lands in specified cases declared unlawful.

(a) Section 1 of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance of erection thereof.

(b) Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U.S.C. 315o) provides:

Fences * * * and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve.

(c) Section 10, paragraph (4) of the Federal Range Code, §4112.3 of this chapter, containing rules for the administration of grazing districts prohibits "Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit."

(d) Section 2 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1270; 43 U.S.C. 315a), provides that "any willful violation of the provisions of this act" or of "rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than \$500."

(e) Violations of any of the provisions of the Act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064).

§ 9239.2-2 Duty of district attorney.

Section 2 of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1062, 28 U.S.C. 41, Par. 21), provides that it shall be the duty of the district attorney of the United States for the proper district on affidavit filed with him by any citizen of the United States that such unlawful enclosure is being made or maintained, showing the description of the lands enclosed with reasonable certainty so that the enclosure may be identified, to institute a civil suit in the proper United States district or circuit court or territorial district court in the name of the United States and against the parties named or described who shall be in charge of or controlling the enclosure complained of.

§ 9239.2-3 Responsibility for execution of law.

The execution of this law devolves primarily upon the officers of the Department of Justice, but as it is the purpose to free the public lands from unlawful enclosures and obstructions, it is deemed incumbent upon the officers of the Department of the Interior to furnish the officers of the Department of Justice with the evidence necessary to a successful prosecution of the law.

§ 9239.2-4 Filing of charges or complaints.

All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper State Director. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

§ 9239.2-5 Settlement and free passage over public lands not to be obstructed.

Section 3 of the Act of February 25, 1885 (23 Stat. 322; 43 U.S.C. 1063), provides that no person by force, threats, intimidation, or by any fencing or enclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

§ 9239.3 Grazing, Alaska.

(a) *Reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in subpart 4132 of this chapter, is unlawful and is prohibited.

(2) Any person who willfully violates any of the rules and regulations in subpart 4132 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$500.

(b) *Livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Tres-

passers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4131.2-7 (g) and (h) of this chapter. Under section 2 of the Act, any person who willfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than \$500.

(2) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case. If satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been willful.

(3) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of \$2 per animal unit month for trespass not clearly willful will be made. Where the trespasses are repeated and/or willful, a minimum charge of \$4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found

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within § 4131.0-3 *et seq.* of this chapter in the amount of \$2,000 or less may be accepted by the authorized officer. Offers for settlement in excess of \$2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage involved until finally accepted by the authorized officer or the State Director, and in no event will it relieve the violator of criminal liability. No lease or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

[35 FR 9800, June 13, 1970. Redesignated at 43 FR 29076, July 5, 1978]

§ 9239.5 Minerals.

§ 9239.5-1 Ores.

(a) For ores trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of coal. *Benson Mining and Smelting Co. v. Alta Mining and Smelting Co.* (145 U.S. 428, 36 L. ed. 762; *Durant Mining Co. v. Percy Consolidated Mining Co.* (93 Fed. 166)).

§ 9239.5-2 Oil.

For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of oil taken, less amount of expense incurred in taking the same.

(b) *Willful trespass.* Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. *Mason v. United States* (273 Fed. 135).

§ 9239.5-3 Coal.

(a) *Determination of payment in coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) For innocent trespass, payment must be made for the value of the coal in place before severance. *United States v. Homestake Mining Company* (117 Fed. 481).

(2) For willful trespass, payment must be made for the full value of the coal at the time of conversion without deduction for labor bestowed or expense incurred in removing and marketing the coal. *Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company* (203 Fed. 795). The mining of coal in trespass is presumed to be willful, in the absence of persuasive evidence of the innocence and good faith of the trespasser. *United States v. Ute Coal and Coke Company* (158 Fed. 20).

(b) *Coal mined when there is no lease in effect.* Any mining of coal which is not pursuant to a coal lease in effect at the time of the mining shall constitute a trespass, and the coal so mined must be paid for on a trespass basis.

(c) *Coal mined by successful bidder at public sale.* The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the furnishing of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is in trespass and must be paid for on a trespass basis.

(d) *Coal permit, lease, or license not to issue until trespass account settled.* No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

(e) *Right of surface owner to mine coal for domestic use.* The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or under the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under subpart 3507 of this chapter shall be subject to a fine of not more than \$1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such

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violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to part 4 of this chapter.

[35 FR 9800, June 13, 1970, as amended at 41 FR 36023, Aug. 26, 1976; 42 FR 4460, Jan. 25, 1977]

§ 9239.6 Materials.

§ 9239.6-1 Turpentine.

For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of the gum and injury done to the trees. *United States v. Taylor* (35 Fed. 484).

(b) *Willful trespass.* Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. *Union Naval Stores Co. v. United States* (240 U.S. 284, 60 L. ed. 644).

§ 9239.7 Right-of-way.

§ 9239.7-1 Public lands.

The filing of an application under part 2800, 2810, or 2880, of this chapter does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided at §§ 2800.0-5(m), 2802.1(d) and 2882.1, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in §§ 2801.3, 2812.1-3, and 2881.3, of this title. No new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

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(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

[54 FR 25855, June 20, 1989]

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